IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Appeal No.562 of 2004

Judgment reserved on: 3.10.2007

Decided on: 31.10.2007

Gudu Ram **…Appellant.**

Versus

State of H.P. **…Respondent.**

Coram

The Hon'ble Mr. Justice Surjit Singh, Judge.

The Hon'ble Mr. Justice Surinder Singh, Judge.

Whether approved for reporting? Yes.

For the appellant : Mr. Vinay Thakur, Advocate.

For the respondent : Mr. Som Dutt Vasudeva, Additional Advocate General with Mr. D.S. Nainta, Deputy Advocate General.

Surjit Singh, Judge

Appellant Gudu Ram has preferred this appeal against the judgment of the Sessions Court, whereby he has been convicted of offence punishable, under Section 302 of the Indian Penal Code and sentenced to undergo imprisonment for life and to pay a fine of Rs.2000/-; in default of payment of fine to undergo rigorous imprisonment for a further period of six months.

2. First, the prosecution version may be noticed. PW-2 Sheetal Singh, an employee of Himachal Road Transport Corporation, was posted in the workshop of the said Corporation at Taradevi. He had been residing in village Taradevi in some rented accommodation. His brother Jai Pal Singh (PW-1) and deceased Dalip Singh, who was his cousin, also started residing with him, about a year prior to the occurrence (the

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Whether reporters of the local papers may be allowed to see the judgment?

occurrence took place on the night intervening 12th and 13th November, 2003). About a week prior to the occurrence, appellant Gudu, a cousin of the wife of PW-2 Sheetal Singh, also joined them. On the fateful night, PW-2 Sheetal Singh was on duty in the workshop at Taradevi. Around 8 PM, appellant Gudu, brought a bottle of whisky. The three planned to cook meat for the dinner. PW-1 Jai Pal Singh and deceased Dalip Singh then brought a chicken from the market. Deceased started cooking the chicken meat. At the same time, all the three started drinking whisky brought by the appellant. After consuming two pegs, the deceased declined to consume more liquor. The appellant insisted that he took more. When the deceased did not relent, there was a brawl. PW-2 Sheetal Singh intervened and there was a truce. After some time, PW-1 Jai Pal Singh went out to urinate. When he returned, he saw the deceased and the appellant scuffling. He then asked the deceased to accompany him to Taradevi workshop where PW-2 Sheetal Singh was on duty that night so that he (the deceased) could spend the night there, to escape the fury of the appellant. The two then started towards Taradevi workshop. When they had walked a distance of about 50-60 yards, the appellant appeared from behind and hit PW-1 Jai Pal Singh with a *Thapi* Ext.P-1 and then threw him downwards in the bushes *(**Thapi*** is a wooden object shaped like a cricket bat used for beating clothes while washing them). Thereafter, the appellant hit Dalip Singh on the head with the same *Thapi* and also pushed him down into the bushes. PW-1 Jai Pal Singh did not sustain any serious injury. So he was able to get up and went to the workshop. There he informed PW-2 Sheetal Singh about the incident. The two brothers then went to their rented residence. Neither the appellant nor the deceased was there. Then they went to the site where the deceased was hit with *Thapi* and pushed down. The deceased was found lying in a pool of blood flowing from his head down the road at a

depth of 7-8 feet. The two brothers managed to carry him to their rented accommodation. Then an ambulance was called and the deceased was taken to the hospital by PW-1 Jai Pal Singh. Sheetal Singh went back to the workshop. At the hospital, Dalip Singh died after sometime. Postmortem examination was conducted by PW-16 Dr. Uvi Tyagi. He noticed two contusions on the forehead 2 cms above left eye brow and 2.5 cms apart from each other. Size of each of the two contusions was 1 cm. Colour was bluish. The doctor also noticed greyish abrasion over the root of the nose measuring 2.5 cms, brownish in colour. The doctor also noticed diffused contusion over all the occipital area and left temporal region with collection of blood. Multiple linear fractures of occipital bone, left temporal bone and right temporal bone were also noticed. On reflecting the skull cap, laceration of bone over occipital lobe area and posterior parts of both the parietal bones with sub dural hemorrhage and sub-arachnoidal, was also noticed. The doctor opined that the cause of death was hemorrhagic shock as a result of ante-mortem head injury and the death appeared to have occurred immediately after the infliction of the injury. The doctor also opined that the injury could have been caused by means of *Thapi* Ext.P-1, which was in three broken pieces when shown to him. Police was informed telephonically by the authorities of the hospital. PW-14 Piyare Lal, Sub Inspector, rushed to the hospital, where he recorded the statement Ext.P-1 of PW-1 Jai Pal Singh and forwarded that statement to the Police Station for formal registration of the case. Case was registered vide FIR Ext. PO. Investigation of the case was conducted by PW-17 Sandeep Dhawal. After the inquest he got the postmortem of the dead body conducted. He also visited the spot and found three pieces of *Thapi* Ext.P-1. He also noticed blood in the bushes down the road. PW-15 Padam Dev, Head Constable, was deputed to arrest the appellant from his village in Rohru area. He went to Police Station, Rohru on

14.11.2003, where the appellant had already been brought by Rohru police from his village. He arrested him and brought him to Police Station, Boileauganj (Shimla), where the case had been registered.

3. On completion of the investigation, police filed report, under Section 173 Cr. P.C. in the Court of the concerned Judicial Magistrate, who after complying with the requirement of Section 207 Cr. P.C, committed the case to the Sessions Court. The learned Sessions Judge charged the appellant with offence, under Section 302 of the Indian Penal Code and on his pleading not guilty, put him on trial. On the conclusion of the trial, the appellant was found guilty of committing murder of Dalip Singh and convicted and sentenced, as aforesaid.

4. Learned counsel representing the appellant submitted that the trial Court did not appreciate the evidence of the prosecution properly inasmuch as it believed the statement of PW-1 Jai Pal Singh in spite of the fact that he was a hostile witness, he had made contradictory statements in the same breath and there were inherent contradictions in his statement. He submitted that in the examination-in-chief PW-1 Jai Pal Singh stated that he saw the appellant hitting the deceased with a *Thapi*, but in the cross-examination he stated that he did not see him dealing any blow to the deceased because he himself had already been pushed down the road edge into the bushes. He further submitted that PW-1 Jai Pal Singh, per his testimony, took PW-2 Sheetal Singh to his house first, even though according to him, the deceased had been hit with a *Thapi* and pushed down into the bushes at a place falling on the way from the workshop to the residence. It was also submitted that a brother of the deceased, namely, PW-7 Rajinder Singh, had very categorically stated that he suspected the involvement of PW-1 Jai Pal Singh and PW-2 Sheetal Singh in the killing of his brother.

5. In the trial Court also, the aforesaid submissions were made, but the trial Judge rejected the same. The reasons given by the trial Court are:

(a) Deceased and PW-1 Jai Pal Singh could not be said to be having any enmity, even though their fathers might have had some land dispute as testified by PW-7 Rajinder Singh, a brother of the deceased because despite such a dispute they had been living together for about a year in the same rented premises with PW-2 Sheetal Singh, the elder brother of PW-1 Jai Pal Singh. Their living together itself belied the testimony of PW-7 Rajinder Singh that he suspected the involvement of PW-1 Jai Pal Singh and his brother PW-2 Sheetal Singh in the commission of the murder of his brother on account of the aforesaid dispute.

(b) PW-1 Jai Pal Singh might not have seen the appellant hitting the deceased with a Thapi, but the fact that the two were together when they were assaulted and PW-1 Jai Pal Singh had been pushed down the edge of the road first and soon thereafter the deceased was also pushed down and he landed near the same site where PW-1 Jai Pal Singh had landed, as also the fact that three pieces of Thapi Ext.P-1 were found near the spot and four injuries were found on the head of the deceased at the time of his postmortem, lend credence to the oral version of PW-1 Jai Pal Singh that it was the appellant who was responsible for causing the fatal injuries to the deceased;

(c) Appellant admitted his presence at the rented accommodation of PW-2 Sheetal Singh on the fateful night, but offered no explanation, whatsoever, for his leaving the house of PW-2 Sheetal Singh that very night at an odd hour and going to his village in Rohru area;

(d) PW-1 Jai Pal Singh also had an injury on his person when examined by PW-9 Dr. S.K. Verma on 13.11.2003 at 5.45 A.M. and as per the opinion of the said doctor that injury could have been caused by means of Thapi Ext.P-1.

6. We see no reason to disagree with the aforesaid reasons of the trial Court, which are well founded and based on correct and proper appreciation of the evidence on record. It is not denied by the appellant that the deceased had been living in the rented accommodation with PW-1 Jai Pal Singh and PW-2 Sheetal Singh. Rather, he has admitted this fact in the course of his examination, under Section 313 Cr. P.C., vide answer to Question No.3. He has admitted his presence in the rented accommodation of PW-2 Sheetal Singh in the company of deceased and PW-1 Jai Pal Singh in answer to Question No.3 of his statement, under Section 313 Cr. P.C., even though he has denied that he was having drinks in their company. He has stated that he left for his house with PW-1 Jai Pal Singh and the deceased was still there in the rented accommodation and no incident involving the use of force or violence had taken place so long as he was there. He has, however, offered no explanation for leaving the place of PWs 1 and 2 at an odd hour of the night and going straight to his village in a remote area of Rohru Tehsil.

7. Trial Court has noticed one more circumstance against the appellant viz. his pyjama Ext.P-1 bore stains of human blood. The pyjama was sent to the Chemical Examiner, who reported that it bore stains of human blood. The pyjama was recovered on the basis of disclosure statement made by the appellant. The fact is proved by the testimony of PW-3 Piare Lal, in whose presence the said disclosure statement was made and PW-17 Sandeep Dhawal, Investigating Officer, to whom this

statement was made. There does not appear to be any reason to disbelieve the testimony of the two witnesses with respect to this fact. Recovery of Pyjama pursuant to the aforesaid disclosure statement is proved by the testimony of PW-4 Ram Saran, Pardhan of Gram Panchayat and PW-17 Sandeep Dhawal. Recovery memo. is Ext.PG.

8. In view of what has been discussed hereinabove, we see no reason to disagree with the finding of the learned trial Court that it is the present appellant who killed the deceased by hitting him with Thapi Ext.P-1.

9. Learned counsel representing the appellant then submitted that it was a case of culpable homicide not amounting to murder punishable, under Section 304 (Part-II) and not a case of murder, under Section 302 I.P.C. He urged that there was no premeditation and that the deceased and the appellant happened to quarrel and then had a physical fight in inebriated state. Learned counsel placed reliance upon five judgments of the Hon'ble Supreme Court in support of his submission. The same are - ***Didar Singh and others*** *Vs*. ***State of Haryana***, ***1993 SCC (Cri) 725***, ***Manke Ram*** *Vs*. ***State of Haryana***, ***JT 2003(4) SC 23***, ***Kailash*** *Vs.* ***State of M.P***, ***(2007) 1 SCC (Cri) 476***, ***Karuppusamy and another*** *Vs.* ***State of TN***, ***(2007) 1 SCC (Cri) 515*** and lastly **Mohd. Shakeel** *Vs*. ***State of A.P, (2007) 2 SCC (Cri) 44***.

10. In Didar Singh's case (supra), the facts were that the deceased and the accused, numbering two, had a drunken brawl in the course of which the deceased sustained fatal injuries. In the present case, the evidence on record shows that the deceased was a meek person. He did not use any force or violence against the appellant. Rather, when the latter started assaulting him, he left the place in the company of PW-1 Jai Pal Singh, so that he could spend the night in peace at the workshop.

11. In Manke Ram's case (supra), two police officials sat together to drink and in the course of the drinking-bout, one of them got annoyed and fired two shots from his service revolver upon the other. It was during the course of arguments between the two officials that one took out the revolver and fired two shots, one hitting the deceased on the side of the neck and the other on the thigh. The Hon'ble Supreme Court held that the case was covered by exception fourth to Section 300 of the Indian Penal Code.

12. In the case in hand, as already noticed, the deceased simply stated that he was not interested in drinking more liquor, but the appellant insisted that he kept company. PW-1 Jai Pal Singh intervened and there was peace. When PW-1 went outside to urinate, the appellant again started giving beating to the deceased. It was a case of unilateral beating of deceased by the appellant and not a quarrel or a fight between the two. PW-1 Jai Pal Singh again intervened and asked the deceased to accompany him to the workshop at Taradevi so that he was left there in the protection of PW-2 Sheetal Singh and thereafter when the two were proceeding towards the said workshop and had gone a distance of about 50-60 yards on foot, the appellant followed them with a *Thapi* and caused four injuries on the head of the deceased with the said *Thapi*. There was enough time for the appellant to cool down after the deceased and PW-1 Jai Pal Singh left the house and before the deceased was hit with *Thapi* Ext.P-1 on the head resulting in four fatal injuries. Thus, the case is not covered by exception fourth to Section 300 of the Indian Penal Code.

13. In Kailash's case (supra), a single blow by the blunt side of an axe was given on the head of the victim on a sudden provocation and without any premeditation and the death occurred two days after the infliction of the injury. The Hon'ble Supreme Court held this was a case of culpable homicide not amounting to murder punishable, under Section 304

(Part-II) and not a case of murder punishable, under Section 302 of the Indian Penal Code. In the present case, there were four injuries on the head and the same resulted in death within a few hours and the blows were given with *Thapi* Ext.P-1 with such a force that it broke into three pieces. Further, the deceased in this case gave no provocation to the appellant. Rather, he withdrew from the scene and the appellant despite having enough time to cool down followed him and struck him on his head with a *Thapi* and then pushed him from the road about 8-9 feet down.

14. In Karuppusamy and another's case (supra), there was a quarrel between the deceased and the two accused persons in which the deceased was hit on the chest and the head with a fire wood log. Record showed that the deceased had attacked the accused with knife and the latter had acted in self defence. It was because of these peculiar facts that the accused were held to be guilty of an offence under Section 304 (Part-II) I.P.C. and not of murder, under Section 302 I.P.C. In the present case, as already noticed hereinabove, the facts are totally different.

15. In Mohammad Shakeel's case (supra), the accused had inflicted only one injury to the deceased and he also received one injury at the hands of the deceased and because of these facts the Hon'ble Supreme Court held that this was a case of culpable homicide not amounting to murder, under Section 304 (Part-II) and not a case of murder, under Section 302 I.P.C. In the present case, the deceased not only did not cause any injury to the appellant, but he even did not make any attempt to do so. He rather withdrew from the site of quarrel but was followed and hit from behind. Thus, this precedent also does not come to the rescue of the appellant.

16. In view of the above discussion, the appeal is dismissed and the conviction and sentence of the appellant, as ordered by the trial Court, are upheld.

(Surjit Singh), J

October 31, 2007(ss) **(Surinder Singh), J**